

House Bill 39  
March 6, 2009  
Presented by Robert Lane  
Senate Natural Resources Committee

Mr. Chairman and committee members, for the record I am Robert Lane, Chief Legal Council of Montana Department of Fish, Wildlife & Parks (FWP).

FWP supports this bill as a good faith effort to improve certain aspects of water right enforcement by providing more options to those who do the enforcement. For example, the bill would amend Section 85-2-114 to clarify that the attorney general, in addition to the county attorney, may bring water right enforcement actions without a request from the DNRC. Of course, the DNRC may still bring an enforcement action on its own, or request the help of a county attorney or the attorney general. In other words, the bill acknowledges a trifecta of public bodies with public water right enforcement authority and gives them the option to work with and support one another. This clarification will benefit the holders of existing water rights as they seek help with water right enforcement. Importantly, however, the bill does not limit private enforcement actions.

FWP also supports the bill's proposal to create a water right enforcement account that would dedicate fines collected for water use violations to future enforcement actions. In a time of tight budgets at both the county and state level, this fund is necessary.

Finally, this bill would amend Section 3-7-311, MCA, the duties of water masters, to allow a district court judge to appoint a water master to serve as a special master to that district court for water distribution controversies, subject to the Chief Water Judge's approval. Such technical assistance may be of great value to the district courts. However, FWP has two concerns with this aspect of the bill. First, the adjudication is now on a statutory timeline. Addition duties for water masters could once again slow down the adjudication. Second, such assistance to a district court could result in conflicts of interest for water masters.

FWP proposed to the Water Policy Committee that language should be added to this bill providing that when a Water Master may not be assigned to work on a District Court enforcement action in the same basin in which he or she has been or is currently working on a decree, at least until there is a final decree.

FWP would be even more supportive of this bill if those protections against conflict of interest could be made clearer in this legislation